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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,982	03/23/2005	Diane Joyce Burt	102792-250(11032P3)	4996

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EXAMINER	
DOUYON, LORNA M	

ART UNIT	PAPER NUMBER
1751	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/525,982	BURT ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 March 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *2/25/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Specification

1. The disclosure is objected to because of the following informalities: on page 24, line 11, there is a missing US Patent number.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. Claims 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, line 7 and claim 12, last line, the term "alkoylated" is not understood.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3-6, 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Dickler et al. (US Patent No. 6,037,319), hereinafter "Dickler".

Dickler teaches water-soluble packets containing liquid cleaning concentrates (see abstract). In Example 1, Dickler teaches a neutral floor cleaner comprising 75.49%

dimethyl monoethyl ether (reads on component b); 8.00% sodium lauryl sulfate; 0.50% dimethyl glycoxide; 0.40% monoethanolamine; 13.61% nonyl phenoxypolyethyleneoxy ethanol and 2.00% water (see col. 5, lines 5-26), which is packaged in a water-soluble film made of polyvinyl alcohol 9see col. 8, lines 47-48). The cleaning concentrate should inherently possess a flash point within those recited inasmuch as the same components have been utilized. Dickler also teaches a method of cleaning an object which comprises providing a volume of water, adding said cleaning packet to said volume of water to dissolve the water-soluble container and dilute the cleaning concentrate within the container to form an aqueous cleaning composition, and applying the aqueous cleaning composition to a material to clean said material (see col. 2, lines 48-55; claim 15). Dickler teaches the limitations of the instant claims. Hence, Dickler anticipates the claims.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1, 3-8, 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeNome et al (US 2002/0142931), hereinafter "DeNome".

DeNome teaches an automatic dishwashing composition in the form of an anhydrous, shear-thinning organo-solvent-based gel (see abstract), and in unitized form for example pouches, sachets, etc. which are particularly useful for cleaning heavily solied dishwashing loads and for the removal of cooked-, baked- and burnt-on soils (see paragraph 0001 on page 1). The composition contains less than about 5%, preferably less than about 1% free moisture (see paragraph 0012 on page 2), and from about 10% to about 90% of solvent by weight of the composition (see paragraph 0027 on page 4). Suitable solvents include alcohols (aliphatic C_4-C_{10}), alkanolamines, glycol ethers and mixtures thereof; and suitable glycol ethers include ethylene glycol monomethyl ether and propylene glycol monobutyl ether (see paragraph 0045 on page 5). The composition also comprises surfactants like anionic surfactants such as alkyl sulfates and alkyl ether sulfates, nonionic alkoxylated surfactants such as ethoxylated-propoxylated alcohols, cationic surfactants, amphoteric surfactants and mixtures thereof (see paragraph 0048 on pages 5-6). Preferred unitized dose forms are water soluble pouches or sachets which can be made in known manner, for example, blow-, injection- or rotary moulding, and polyvinyl alcohols are preferred polymers for use as pouches (see paragraphs 0069 and 0072 on page 7). DeNome, however, fails to specifically disclose at least 70 wt% of the solvent, the flash point of the composition, the combination of propylene glycol monobutyl ether with propylene glycol methyl ether.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range which is within the range of applicant's claims because it has been held to be obvious to select a value in a

known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the prima facie case of obviousness. See In re *Boesch,* 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also In re *Woodruff* 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and In re *Aller,* 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955).

With respect to propylene glycol methyl ether glycol, DeNome teaches glycol ethers in paragraph 0045 on page 5, one of which is ethylene glycol monomethyl ether Even though DeNome does not explicitly disclose propylene glycol monomethyl ether, it would have been obvious to one ordinary skill in the art to have substituted the ethylene glycol monomethyl ether with its homologues like propylene glycol monomethyl ether because characteristics normally possessed by members of homologous series are principally the *same,* and vary but gradually from member to member; chemists knowing properties of one member of series would in general know what to expect in adjacent member, see In re *Henze, 85* USPQ 261.

With respect to the flash point of the composition, it would have been obvious to one ordinary skill in the art at the time the invention was made to reasonably expect the composition of DeNome to have a flash point within those recited because similar ingredients with overlapping proportions have been utilized.

7. Claims 9-12, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeNome as applied to the above claims, and further in view of Bettiol et al. (US Patent No. 5,958,858), hereinafter "Bettiol".

DeNome teaches the features as described above. DeNome, however, fails to disclose alkylpolyglycoside surfactant and alkoxylated quaternary ammonium surfactant.

It is known from Bettiol to incorporate alkylpolyglycoside nonionic surfactants (see col. 11, line 50+) and alkoxylated quaternary ammonium surfactant compounds (see col. 13, lines 34-38) into a similar liquid dishwashing composition (see col. 43, lines 49-50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate alkylpolyglycoside surfactant and alkoxylated quaternary ammonium surfactant into the composition of DeNome because DeNome specifically desires nonionic and cationic surfactants into his composition and Bettiol teaches suitable surfactants in an analogous art.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.

1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-6, 16-18 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 5 of U.S. Patent No. 7,189,686. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to similar water-soluble containers having similar ingredients and differing only in their respective proportions. Optimization of the respective proportions, however, is within the level of ordinary skill in the art.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered cumulative to or less material than those discussed above.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M. Douyon/
Primary Examiner
Art Unit 1751